

SAMPLE SEPARATION AGREEMENT AND RELEASE OF CLAIMS

[Date Agreement is given to Employee]

Dear [Name]:

After careful consideration, [Company Name] has decided to eliminate your position as part of an economic reduction in our workforce. [DELETE THIS IF TERMINATION FOR ANOTHER REASON]

[Company Name] does not have a formal policy or practice of paying severance benefits. However, we have chosen to provide you the discretionary severance benefits described below to ease your transition. The severance benefits are offered in consideration of the following mutual agreements:

1. **SEPARATION DATE:** Your final working day with [Company Name] is scheduled to be [Termination Date].
2. **FINAL PAYCHECK AND WAGES:** On your final day of work, you will be paid all wages, salary, [unused accrued vacation/PTO] and other compensation due through your last day worked, whether or not you sign this agreement.

The claims you are releasing in this Agreement do not include any claims for earned wages, bonuses, commission pay, or other compensation that you have already earned. By signing below, you acknowledge you have been paid your earned salary, accrued vacation pay/PTO, and any applicable bonuses or commissions through your separation date. [IF APPLICABLE ADD OR DELETE THE FOLLOWING BULLET POINTS-EDIT AS NECESSARY]

- a. Incentive Compensation: You will remain eligible for bonus compensation for fiscal year 20__ in accordance with the terms of your current incentive plan, depending on the extent to which individual and company goals were achieved during the plan year. Any such bonus will be paid on [Date], after the close of the fiscal year.
 - b. Commissions: You will be paid commissions in accordance with your current commission agreement on all orders that you were responsible for generating and closing prior to your separation date, provided they are shipped and The Company receives payment no later than [Date].
 - c. 401K And Profit Sharing Plans: You may exercise whatever options and privileges are afforded you under The Company's 401K and profit sharing plans with respect to your account balance as of your separation date.
 - d. Expense Reimbursement: [Company Name] will reimburse any reasonable business expenses incurred prior to your separation date in accordance with Company policy, provided you submit a properly documented expense report prior to [Date].
3. **SEVERANCE PAY AND BENEFITS.** [Company Name] will provide the following severance pay and benefits once this agreement takes effect. This Agreement shall be effective when signed and the

revocation period has expired (as described below). If you do not sign this offer of severance, or if you revoke your signature, this offer and all of its provisions shall be withdrawn.

- a. [Company Name] will pay you [\$amount] as discretionary severance pay. This amount shall be paid, less all lawful and required deductions, in one lump sum. This payment will be made as soon as practicable once the revocation period has expired.

You understand and agree that this payment constitutes an extra payment and is in addition to the wages and other benefits to which you are otherwise entitled.

- b. [Company Name] will provide you with the signed original of the letter of reference attached as Exhibit A.

4. **NO OTHER PAY OR BENEFITS.** Except as provided in this agreement, you will not be entitled to or eligible for any other forms of compensation or benefits after your date of termination.
5. **GROUP MEDICAL INSURANCE.** Your paid health insurance coverage will end on [Date]. You may elect to pay for COBRA medical and dental insurance continuation coverage under such conditions provided by COBRA, and you may elect to convert any other applicable group insurance coverage to individual policies and self-pay for such coverage according to any individual conversion privileges contained in such plans.
6. **COOPERATION.** You and [Company Name] agree to cooperate in ensuring a smooth and orderly transition as we carry out this agreement. You also agree that you will refrain from making any false or disparaging statements about The Company or any of its officers, directors or employees. For purposes of this Section, "disparage" shall mean any negative statement, whether written or oral, about [Company Name], its personnel, or its products and services.
7. **RETURN OF COMPANY PROPERTY.** You shall return all Company property in your physical possession or under your control to [Company Name], including but not limited to: keys, laptop computer, credit cards, files, documents, client information, mobile phones, etc. no later than your final working day.
8. **CONFIDENTIALITY.** You agree to keep the terms of this Agreement, including the fact and amount of pay and benefits, strictly confidential to the fullest extent allowed by law. You may disclose the terms of this Agreement to your immediate family, attorney, accountant, financial adviser, or similar advisor, or in response to a government request.
9. **CONFIDENTIAL INFORMATION, NON-DISCLOSURE AND OTHER AGREEMENTS:** For the purposes of this agreement, the terms "Confidential Information" and "Proprietary Data" mean information and data not generally known outside of [Company Name], which concern [Company Name] or its businesses and company business and technical information, including but not limited to: member information (including members' demographic information, contact information, or identifying information, such as names, social security numbers, dates of birth, etc.), patent applications, information relating to inventions, discoveries, products, plans, calculations, concepts, design sheets, design data, system design, blueprints, computer programs, algorithms, software, firmware, hardware, manuals, drawings, photographs, devices, samples, models, processes, specifications, instructions, research, test procedures and results, equipment, identity and description of computerized records,

customer lists, supplier identity, marketing and sales plans, financial information, business plans, costs, pricing information, and all other concepts or ideas involving or reasonably related to the business or prospective business of [Company Name], or information received by [Company Name] as to which there is a bona fide obligation, contractual or otherwise, on [Company Name]'s part, not to disclose.

- a. You agree that the Confidential Information and Proprietary Data constitute trade secrets of [Company Name] and that at all times material to this Agreement, [Company Name] has taken all reasonable steps to protect the confidentiality of this information.
- b. You agree not to use Confidential Information and/or Proprietary Data for the benefit of any other person, corporation or entity, other than [Company Name].
- c. You agree that the Confidential Information and Proprietary Data shall be and remain the exclusive property of [Company Name] and shall not be removed from the premises of [Company Name] under any circumstances whatsoever without the prior written consent of [Company Name].
- d. All notes, notebooks, memorandums, data storage devices (including, but not limited to, USB drives, cloud storage platforms, and compact discs), and other similar repositories of information containing or relating in any way to Confidential Information and/or Proprietary Data shall be the property of The Company. All such items made or compiled by you or made available to you during the period of employment, including all copies thereof, shall be delivered to [Company Name] upon separation of employment.
- e. You agree not to disclose to any other person or entity, either directly or indirectly, any Confidential Information and/or Proprietary Data. You understand that the use or disclosure of any of the Confidential Information and/or Proprietary Data may be cause for an action at law or in equity in an appropriate court of the State of [State] or of any state of the United States, or in any federal court, and that without waiving the right to collect damages from Employee, [Company Name] shall be entitled to an injunction prohibiting the use or disclosure of the Confidential Information and Proprietary Data.
- f. Any existing agreements between you and [Company Name] concerning protection of trade secrets, ownership of inventions, intellectual property rights, or unfair competition shall remain in effect by their terms.

10. **RELEASE OF CLAIMS.** Except as described below, in exchange for the severance benefits contained in this agreement, which are benefits you are not otherwise entitled to receive, you, on behalf of your descendants, ancestors, dependents, heirs, executors, administrators, assigns, and successors, hereby forever release [Company Name] and any of its related or affiliated organizations, past, present, future, and all of their respective officers, directors, shareholders, trustees, agents, representatives, employees, employees' families, and all of their respective successors and assigns ("Released Parties") from any and all claims, actions, causes of action, rights, or damages including costs and attorneys' fees which you may have, known, unknown or later discovered, which arose prior to the date you signed this agreement. To the fullest extent allowed by law, you hereby waive and release all such claims in return for the severance pay and benefits you will receive under this agreement.

You further represent that no claims, complaints, charges, or other proceedings are pending in any court, administrative agency, commission or other forum relating directly or indirectly to your employment with [Company Name].

11. **CLAIMS INCLUDED IN RELEASE:** Your release of claims related to your employment with [Company Name] is intended to be as broad as the law allows. The types of claims that you are releasing under this agreement include but are not limited to the following:

- a. Any known or unknown claims under any local, state or federal laws prohibiting discrimination in employment, including without limitation, Title VII of the Civil Rights Act, the Americans with Disabilities Act, the Age Discrimination in Employment Act, or the Older Workers Benefit Protection Act.
- b. Claims of wrongful termination of employment under any State or federal law (including wrongful termination in violation of public policy) or claims alleging breach of contract, defamation, tortious interference with business expectancy, infliction of emotional distress, libel, slander, other tort, or any other legal restriction on [Company Name]'s right to terminate any of its employees.
- c. This release also includes any unknown claims that you may not be aware of at this time. In that respect, you waive the protection of any applicable law that might otherwise prevent you from waiving unknown claims, such as California Civil Code section 1542 which states:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

12. **CLAIMS NOT INCLUDED IN RELEASE:** The Releases in this Agreement will not prevent you from doing any of the following:

- a. Applying for unemployment compensation.
- b. If applicable, obtaining state disability insurance, or benefits through workers' compensation.
- c. Asserting any right that is created or preserved by this agreement, such as your right to receive the severance pay and benefits outlined above, or to continue group medical coverage under COBRA.
- d. Filing a charge with or participating in any investigation or proceeding conducted by the EEOC or a comparable agency. Notwithstanding the foregoing, you agree to waive your right to recover monetary damages in any charge, complaint, or lawsuit filed by you or by anyone else on your behalf.

13. **ATTORNEY CONSULTATION.** [Company Name] is hereby advising you to consider this agreement carefully, and to consult with an attorney of your choice before signing this agreement.

14. **ENTIRE AGREEMENT.** This Agreement reflects the entire agreement between you and [Company Name], and supersedes any and all prior communications, understandings or agreements, oral or written, between you and [Company Name] pertaining to the subject matter of this Agreement. This Agreement may not be modified or amended except by written agreement between you and [Company Name].
15. **SEVERABILITY.** If any of the provisions of this Agreement are held to be invalid or unenforceable, the remaining provisions will nevertheless continue to be valid and enforceable.
16. **APPLICABLE STATE LAW.** This Agreement is made and shall be construed and performed under the laws of the State of [State].
17. **PERIOD TO CONSIDER.** You may take up to [DATE that is a MINIMUM OF 45 DAYS from the date you give the agreement to the employee. You can use a date calculator to calculate the date you insert here: <http://www.timeanddate.com/date/dateadd.html#>] to consider and accept the terms of this Agreement. You are urged to take this time to consider this Agreement and to consult with an attorney about it. By signing this Agreement, you acknowledge the following:
- a. You have been given at least forty-five (45) days to consider this Agreement;
 - b. This Agreement is written in a manner that you understand;
 - c. The releases in this agreement are made knowingly and voluntarily, without any duress or coercion and with the full intent of releasing the Released Parties of and from any and all claims; and
 - d. You have been advised by [Company Name] to consult with an attorney prior to signing this Agreement.
18. **REVOCATION PERIOD.** You may revoke this Agreement within seven (7) calendar days of the date on which you first signed this Agreement. If you revoke the Agreement, then the Agreement shall become null and void, meaning you will not receive any Severance/Separation Consideration as set forth in the Agreement.
- To be effective, your revocation must be in writing and returned by hand-delivery or by regular U.S. Mail postmarked to [Company Name], or by commercial parcel shipment (e.g. UPS, Fedex), sent Attn: [Name, Title, Full Address] or faxed to the confidential fax: [fax number] within seven (7) calendar days of the date on which you first signed this Agreement.

If you choose to accept the severance benefits offered, please sign the original copy of this Agreement and return it as indicated above, *no earlier than your last day of employment*. This offer expires at 5:00 p.m. [Applicable Time Zone] on [SAME 45 DAY DATE AS IN PERIOD TO CONSIDER, ABOVE]. Keep a copy of this signed Agreement with your personal records.

We wish to make this transition as smooth as possible for you. Please let me know if you have questions about this Agreement or other issues related to your end of service. I can be reached at [Phone number and/or email].

Thank you for your service to [Company Name] and the many contributions you have made. I wish you the best in your future endeavors.

Sincerely,

[Signature]

[Company Representative Name, Title]

EMPLOYEE ACCEPTANCE:

Please read carefully. This agreement includes a release of known and unknown claims.

I acknowledge and agree that as of the date of signing, I have received all wages to which I am entitled.

Accepted and Agreed this _____ day of _____, 20_____.

Employee

Signature:

Name (print): _____ Date: _____

Attachment A: OWBPA Information Sheet

Attachment B: Reference Letter

Legal Disclaimer: This document is intended for informational purposes only, and does not constitute legal information or advice. This information is provided in consultation with federal and state statutes and do not encompass other regulations that may exist, such as local ordinances. PLEASE CONSULT YOUR ATTORNEY ABOUT STATE SPECIFIC ISSUES AND LANGUAGE RELATED TO SEVERANCE AGREEMENTS. Transmission of documents or information does not create an attorney-client relationship. If you are seeking legal advice, you are encouraged to consult an attorney.